M2873

09/388,069

Attorney Docket No. 353-100



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

n re Application of:) Group Art Unit: 2873
STEPHEN LEROY POLLARD)) Examining Attorney: Hung X Dang
Serial No.: 09/388,069 Filed: 9/1/1999 For: COMFORT OPTICS VISOR	Pasadena, California Date: June 13, 2005 I certify that this document and fee is being deposited on June 13, 2005 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexendria, VA 22313-1450. SALLY SHORE Date: June 13, 2005

LETTER

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Dear Sir:

Responsive to the Office Action mailed April 14, 2005.

In paragraphs 2,3 and 5 the Examiner objects to alleged "new matter" under 35 U.S.C. 132 (Paragraph 2); to the same "new matter" as the sole apparent basis for the rejection under 35 U.S.C. 112, first paragraph (Paragraph 3); and as the reason for the rejection on Chang et al. United States Patent No. 5,920,371 in view of Leonardi et al. United States Patent No. 5,642,178 under 35 U.S.C. 103(a) as maintained in Paragraph 4 and as subsequently set forth in Paragraph 5.

The "new matter" is alleged to be in the words "integrally attached side bands extending outward from at each side of said expansion loop at its upper end at said split and terminating in a free distal end".

We attach herewith as Attachment A Figures 1 to 3 of the drawings on file together with the elements of claim 7 shown thereon. There is no new matter. The structure of claim 7 is as shown in these Figures, see Attachment B which is claim 7 as read on the drawings. The rejections for "new matter" should be withdrawn.

The rejection on prior art should be withdrawn. As the Examiner appears, at least tacitly, to acknowledge, the Chang et. al. and Leonardi et al. patents do not render obvious all of the elements that make up the structure of claim 7. Thus, even when combined, Chang et al. and Leonardi do not point to the subject matter of claim 7.

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This case is similar to several of the cases discussed in <u>Vas-Cath Inc. v.</u>

<u>Mahurkar</u>, 19 USPQ 2d 1111 (Fed. Cir. 1991). For convenience a copy of this discussion is attached as Attachment C. See <u>Vas-Cath</u> at pp. 1117-1118.

The Notice of Allowance is requested.

Respectfully submitted,

Bv:

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Dated: June 13, 2005

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